

DATE: August 24, 2007

In Re:

SSN: -----

Applicant for Security Clearance

ISCR Case No. 06-24762

**DECISION OF ADMINISTRATIVE JUDGE
DARLENE LOKEY ANDERSON**

APPEARANCES

FOR GOVERNMENT

Jennifer I. Goldstein, Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant's foreign influence, including his wife, step-daughter, step-daughter's father, and in-laws, who are all Chinese citizens and maintain close foreign family ties with China, pose a potential security risk and have not been mitigated. Clearance is denied.

STATEMENT OF THE CASE

On March 1, 2007, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 (as amended), and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to the Applicant, which detailed the reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for the Applicant and recommended referral to an Administrative Judge to determine whether a clearance should be denied or revoked.

The Applicant responded to the SOR in writing on March 20, 2007, and requested a hearing before a DOHA Administrative Judge. This case was assigned to the undersigned on June 27, 2007. A notice of hearing was issued on July 5, 2007, scheduling the hearing for July 30, 2007. At the hearing the Government presented one exhibit. The Applicant presented no exhibits but did testify on his own behalf. The Government moved to amend the SOR to include an additional allegation under 1(d). (Tr. pp.59-60). The official transcript (Tr.) was received on August 10, 2007.

FINDINGS OF FACT

The following Findings of Fact are based on Applicant's Answer to the SOR, the exhibit and the testimony. The Applicant is 36 years old and has a high school diploma. He is employed as a Laboratory Technician for a defense contractor. He seeks a security clearance in connection with his employment in the defense industry.

Paragraph 1 (Guideline B - Foreign Influence). The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has foreign contacts that could create the potential for foreign influence that could result in the compromise of classified information.

The Applicant is a native born United States citizen. In May 2005, he married a woman who is a native born Chinese citizen. The Applicant's wife has a daughter from a previous marriage who is also a native born Chinese citizen. The Applicant, his wife and his fourteen year old step-daughter now live together in the United States. His wife and step-daughter are currently waiting for their resident cards. (Tr. p. 32).

The Applicant's in-laws, including his wife's mother, father and sister, are all residents and citizens of China. They do not know that their daughter, the Applicant's wife, has married a United States citizen. The Applicant has never met his parents-in-law, or his wife's sister and his wife does not want him to know them. The Applicant explained that his wife told him that it would be a disgrace to her parents if they were to find out that she divorced her first husband and married without their permission. (Tr. pp. 36-37). He does not know how they are supported or whether they get a pension from the Chinese government. (Tr. p. 36).

The Applicant initially met his wife during a business trip to China in September 2002. They dated for three years before they were married and communicated by telephone on a daily basis. The Applicant traveled to China in August 2002, October 2002, November 2002, November 2003, November 2004, March 2005 and May 2005. (Tr. Pp. 21-24). Three of his trips to China he paid

for himself. The others were required for business. On each occasion, he stayed between three and five weeks. The Applicant states that he has never had any strange contacts with or been approached by any Government officials seeking information from him of any type during any of his trips to China. (Tr. pp. 23-24).

The Applicant's wife maintains telephonic contact with her parents about twice a month. She speaks to her sister in China about twice a year. The Applicant does not speak Chinese and does not understand the conversations his wife has with her parents and her sister.

The Applicant's wife has significant assets in China. His wife owns an apartment in China worth approximately \$75,000.00, and investments in the Chinese stock market that total approximately \$100,000.00. The Applicant provides all of the financial support for his wife and step-daughter. He encourages his step-daughter to maintain regular and consistent contact with her father who is also a resident and citizen of China.

I have taken administrative notice of the fact that China targets the United States for the collection of classified information. China has a poor human rights record, including arbitrary arrests and detentions and torture of its prisoners. China has a highly trained military and seeks to acquire United States technology through clandestine means, and it regularly conducts surveillance of visitors to its country. Based upon the political climate in China, the security risk is elevated.

POLICIES

Security clearance decisions are not made in a vacuum. Accordingly, the Department of Defense, in Enclosure 2 of the 1992 Directive sets forth policy factors and conditions that could raise or mitigate a security concern; which must be given binding consideration in making security clearance determinations. These factors should be followed in every case according to the pertinent criterion. However, the conditions are neither automatically determinative of the decision in any case, nor can they supersede the Administrative Judge's reliance on her own common sense. Because each security clearance case presents its own unique facts and circumstances, it cannot be assumed that these factors exhaust the realm of human experience, or apply equally in every case. Based on the Findings of Fact set forth above, the factors most applicable to the evaluation of this case are:

Guideline B (Foreign Influence)

6. *The Concern.* Foreign contacts and interests may be a security concern if the individual has divided loyalties or foreign financial interests, may be manipulated or induced to help a foreign person, group, organization, or government in a way that is not in U. S. interests, or is vulnerable to pressure or coercion by any foreign interest. Adjudication under this Guideline can and should consider the identity of the foreign country in which the foreign contact or financial interest is located, known to target United States citizens to obtain classified information and/or is associated with a risk of terrorism.

Condition that could raise a security concern:

7(a). Contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion;

7(b). Connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;

7(d). Sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of forcing inducement, manipulation, pressure or coercion.

Condition that could mitigate security concerns:

None.

In addition, as set forth in Enclosure 2 of the Directive at pages 16-17, in evaluating the relevance of an individual's conduct, the Administrative Judge should consider the following general factors:

- a. The nature and seriousness of the conduct and surrounding circumstances
- b. The circumstances surrounding the conduct, to include knowledgeable participation
- c. The frequency and recency of the conduct
- d. The individual's age and maturity at the time of the conduct
- e. The voluntariness of participation
- f. The presence or absence of rehabilitation and other pertinent behavior changes
- g. The motivation for the conduct
- h. The potential for pressure, coercion, exploitation or duress
- i. The likelihood of continuation or recurrence.

The eligibility criteria established in the DoD Directive identify personal characteristics and conduct which are reasonably related to the ultimate question, posed in Section 2 of Executive Order 10865, of whether it is "clearly consistent with the national interest" to grant an Applicant's request for access to classified information.

The DoD Directive states, "The adjudicative process is an examination of a sufficient period of a person's life to make an affirmative determination that the person is eligible for a security clearance. Eligibility for access to classified information is predicted upon the individual meeting these personnel security guidelines. The adjudicative process is the careful weighing of a number of variables known as the whole person concept. Available, reliable information about the person,

past and present, favorable and unfavorable should be considered in reaching a determination. The Administrative Judge can draw only those inferences or conclusions that have reasonable and logical basis in the evidence of record. The Judge cannot draw inferences or conclusions based on evidence which is speculative or conjectural in nature. Finally, as emphasized by President Eisenhower in Executive Order 10865, "Any determination under this order . . . shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the Applicant concerned."

The Government must make out a case under Guideline B (Foreign Influence) that establishes doubt about a person's judgment, reliability and trustworthiness. While a rational connection, or nexus, must be shown between Applicant's adverse conduct and his ability to effectively safeguard classified information, with respect to sufficiency of proof of a rational connection, objective or direct evidence is not required.

Then, the Applicant must remove that doubt with substantial evidence in refutation, explanation, mitigation or extenuation, which demonstrates that the past adverse conduct, is unlikely to be repeated, and that the Applicant presently qualifies for a security clearance.

An individual who demonstrates that he has foreign connections may be prone to provide information or make decisions that are harmful to the interests of the United States. Foreign contacts raise legitimate questions as to whether the Applicant can be counted upon to place the interests of the United States paramount to that of another nation. The Government must be able to place a high degree of confidence in a security clearance holder to abide by all security rules and regulations, at all times and in all places.

CONCLUSIONS

Having considered the evidence in light of the appropriate legal standards and factors, and having assessed the Applicant's credibility based on the record, this Administrative Judge concludes that the Government has established its case as to all allegations in the SOR, and that Applicant's foreign contacts have a direct and negative impact on his suitability for access to classified information.

The evidence establishes that the Applicant's wife and step-daughter remain close to their family in China. His wife maintains close and continuing contact with both of her elderly parents and her sister in China. The Applicant's step-daughter contacts her father in China on a regular basis. Since the Applicant's wife's parents do not know that their daughter is married to the Applicant and have never met him, there is an essential part to this puzzle that is missing. The Applicant does not know much about his parents-in-law or his sister-in-law. He does not know whether they are associated, if at all, with the Chinese Government. Based upon this, the record does not contain sufficient evidence in which to make a sound determination.

Under Guideline B, Disqualifying Conditions 7(a) *contact with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure or coercion*; 7(b) *connections to a foreign person, group, government, or country that*

create a potential conflict of interest between the individual's obligation to protect sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information, and 7(d) sharing living quarters with a person or persons, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure or coercion apply. The Applicant's family's close relationship with their foreign relatives who are citizens of and/or reside in China is a security concern for the United States Government. Under the particular facts of this case, none of the mitigating conditions are applicable.

In addition to the Disqualifying and Mitigating Conditions, I have considered the "whole person" concept. The Applicant is newly married to a Chinese citizen. He does not speak Chinese and does not understand the language. His wife and her family speak Chinese on the telephone during their regular contact with each other. The Applicant does not understand the conversations. The Applicant does know that his wife's contact with China is regular, constant and continuing. She has significant financial assets, including property and stock market investments, in China. The Applicant's wife has not broken any foreign ties with China. The Applicant and his family are so closely connected to China that this situation raises a potential security risk and Guideline B (Foreign Influence) is found against the Applicant.

Considering all the evidence, the Applicant has not met the mitigating conditions of Guideline B of the adjudicative guidelines set forth in Enclosure 2 of the Directive. Accordingly, he has not met his ultimate burden of persuasion under Guideline B.

FORMAL FINDINGS

Formal Findings For or Against the Applicant on the allegations in the SOR, as required by Paragraph 25 of Enclosure 3 of the Directive are:

Paragraph 1: Against the Applicant.

Subparas.	1.a.: Against the Applicant
	1.b.: Against the Applicant
	1.c.: Against the Applicant
	1.d.: Against the Applicant

DECISION

In light of the circumstances presented by the record in this case, it is not clearly consistent with the national interests to grant or continue a security clearance for the Applicant.

Darlene Lokey Anderson
Administrative Judge